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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/609,931	06/30/2000	Jay S. Walker	99-099	2766
22927	7590	04/21/2004	EXAMINER	
WALKER DIGITAL FIVE HIGH RIDGE PARK STAMFORD, CT 06905			MCALLISTER, STEVEN B	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 04/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/609,931

Applicant(s)

WALKER ET AL.

Examiner

Steven B. McAllister

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on 09 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-30, 33 and 35 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-30, 33 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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DETAILED ACTION

Specification

The specification and drawings are objected to because they do not appear to provide a basis for claim 25. It is not clear how a plurality of potential offers are determined and how one is selected by the attendant.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-24, and 27-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Walker et al (6,567,787).

Walker et al (hereafter '787) show receiving customer information at a processing device including transaction information; identifying a query based at least in part on customer data; outputting and indication of the query; prompting an attendant to present the query; and receiving a verbal response to the query.

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As to claims 2-12, 14, 15, 19, 20, 22-24, and 28, it is noted that '787 shows all elements of the claims.

As to claim 13, '787 inherently shows identifying a query based at least part on an authority level of an attendant since it shows limiting POS capabilities, including offering promotional discounts, based on authority levels, and it shows identifying queries which provide promotional discounts.

As to claim 16, Walker et al (6,119,099) incorporated by reference in the disclosure of Walker et al (6,567,787) shows identifying a second query comprising a second upsell based on the negative categorization of the response to the first upsell; prompting an attendant to present the second query; and receiving a verbal response to the second query.

As to claims 17 and 18, all further steps are shown.

As to claim 21, '787 recites a POS terminal such as the NCR 7454 or IBM 4683 for receiving customer information. As broadly claimed such devices are portable or capable of being moved about (portable is defined as "capable of being carried or moved about" by *Meriam Webster's Collegiate Dictionary*, 10th ed.).

As to claim 27, '787/099 shows identifying a remediation response comprising offering a second upsell that may be more to the customer's liking based on the verbal response comprising a negative answer to the first upsell; and instructing the attendant to present the response.

As to claim 29, '787/099 shows all elements of the claim.

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As to claim 30, '787/'099 shows all elements including categorizing the customer response.

As to claim 33, '787/'099 shows all elements of the claim including identifying a survey question based at least in part on the customer information; outputting an indication of the survey question; prompting the attendant to verbally present the question; and receiving a response.

As to claim 35, '787/'099 shows all elements including analyzing a verbal response to determine if a remediation response is required, the remediation response comprising a second discount offer to remedy the potential loss of the customer's spare change due to the refusal of the first offer; and instructing the attendant to perform the remediation response.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 25 and 26 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Walker et al ('787/'099).

'787/'099 shows all elements of the claim 25, including determining a plurality of offers determined at least in part on the verbal response. It inherently shows prompting an attendant to select a selected offer from among the offers since it provides for showing potential offers to the attendant only and an offer must be communicated to the customer.

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Alternatively, it shows all elements except the selected offer being selected by the attendant (as opposed to the computer, e.g.). However, it would have been an obvious matter of design choice to have the attendant select the offer since the applicant has not disclosed that having the a particular entity choose the offer to present to the customer solves any stated problem or is for any particular purpose, and it appears that the method would perform equally well either way.

As to claim 26, '787/099 shows all elements of the claim.

1. Claims 1-26, 28, 30, 33 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al (6,456,981) in view of Kesel (5,822,744) Walker et al (6,567,787).

Dejaeger shows receiving customer information at a processing device including transaction information; identifying a query based at least in part on customer data; outputting and indication of the query; and receiving a response to the query. It does not specifically show prompting an attendant to present the query or receiving the response verbally. Kesel shows receiving a verbal response. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by receiving responses verbally in order to facilitate easy responding without a need for knowledge of operating computer peripherals. Walker et al show prompting the attendant to present the query. It would have been obvious to one of ordinary skill in the art to

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further modify the method of Dejaeger by prompting the attendant to present the inquiry in order to provide greater customer satisfaction (Walker, col. 1, lines 34-36).

As to claims 2 and 4, Kesel shows analyzing the responses.

As to claim 3, Dejaeger in view of Kesel shows identifying and outputting a second query and receiving a second verbal response.

As to claim 6, Dejaeger shows that transaction data includes information indicating that a purchase is complete.

As to claim 7, Dejaeger shows that transaction data includes information identifying the start of a transaction.

Additionally, regarding claims 6 and 7, it is notoriously old and well known in the art to associate, for instance, a start and completion time with transaction data. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by doing so in order to provide the ability to correlate purchasing patterns with date or time of day, and to track the amount of time taken to check out.

As to claim 8, Dejaeger shows that the transaction data includes information from a current transaction.

As to claim 9, Dejaeger shows identifying a query based at least in part on transaction information from a previous transaction.

As to claim 10, Dejaeger shows identifying a query based at least in part on information unrelated to a transaction (e.g., an information request).

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As to claim 11, Dejaeger shows identifying a query based at least in part on customer information identifying a particular customer (e.g., as found when the customer swipes his loyalty card).

As to claim 12, Walker et al show that the attendant identifies customer identifying information, since he addresses the customer by name.

As to claim 13, Dejaeger in view of Kesel shows practicing the method using an attendant at a POS terminal. It is inherent that identifying a query is based at least in part on a skill level of an attendant since in the assisted checkout scenario the attendant enters information into the system (e.g., scanning items, etc.). Since the each item scanned is added to the customer profile in substantially real time and the next survey question or offer is based upon the customer profile now modified by the attendant's action, the attendant's skill level plays a part in the determination of the query. (For example, if the attendant misscans an item, it materially affects the content of the user profile and has an effect on what question may be selected).

As to claim 14, Dejaeger shows that the transaction data includes at least identity of the customer.

As to claim 15 Kesel shows generating output data based on the verbal response and categorizing the output data.

As to claims 16-18, Dejaeger in view of Kesel show all elements except prompting the attendant, which is shown by Walker.

As to claim 19, Walker shows identifying the attendant.

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As to claim 20, Walker shows analyzing if the attendant properly presented the query.

As to claim 21, Dejaeger shows receiving the information on a portable computing device such as a Palm Pilot.

As to claim 22, Dejaeger shows receiving customer information using a POS terminal.

As to claim 23, Kesel shows selectively recording the verbal response.

As to claim 24, Dejaeger in view of Kesel show determining an offer based at least in part on the verbal response since the results of the verbal response are integrated into the customer profile and the resulting offer is determined from the customer profile; and presenting the offer.

As to claim 25 and 26, Dejaeger in view of Kesel and Walker et al show all elements of the claim including prompting an attendant to select a selected offer from among the offers and present it to the customer, since Walker et al show presenting the offers to the attendant only and show presenting a plurality of offers for selection. Since an offer must be selected and it must be communicated to the customer, it is inherent that the attendant must do it.

As to claim 28, Walker shows compensating the attendant for properly presenting the query.

2. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al in view of Kesel and Walker et al (6,567,787).

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Dejaeger shows receiving first information; identifying at least a first query based at least in part on the first data; presenting the query; and receiving a response to the query. It does not specifically show prompting an attendant to present the query or categorizing the customer response. Kesel shows categorizing the customer response. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by categorizing the response in order to facilitate efficient data manipulation and data mining of the information contained in the response. Walker et al show prompting an attendant to present the query. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by prompting the attendant to transmit the query in order to increase customer satisfaction.

3. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al in Walker et al (6,567,787).

Dejaeger shows receiving customer information; identifying at least a survey question based at least in part on the customer data; outputting an indication of the query; and receiving a response to the query. It does not specifically show prompting an attendant to present the query. Walker et al show prompting an attendant to present the query. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by prompting the attendant to transmit the query in order to increase customer satisfaction.

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4. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger et al in view of Kesel and Walker et al (6,567,787).

Dejaeger shows receiving first information comprising at least first information about a first product; identifying a query based at least in part on the first data identifying a product; presenting the query; and receiving a response to the query. It does not specifically show prompting an attendant to present the query, receiving a verbal response, analyzing the response, and instructing the attendant to perform remediation. Kesel shows receiving a verbal customer response and analyzing the response. It would have been obvious to one of ordinary skill in the art to modify the method of Dejaeger by receiving a verbal response and analyzing the response in order to allow the customer to respond without having the knowledge of the operation of computer peripherals and to recognize trends in the data. Walker et al show prompting an attendant to present the query; analyzing a verbal response to determine if a remediation response is required; and instructing the attendant to perform the response. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger as taught by Walker et al in order to increase customer satisfaction and to increase sales.

Claims 27 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dejaeger in view of Kesel and Walker et al as applied to claims 1 and 15 above, and further in view of "Re: Overcharging and inaccurate store pricing" (Google Groups printout).

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Dejaeger in view of Kesel and Walker show all elements of the claim except identifying a remediation and instructing an attendant to present the remediation response. "Re: Overcharging..." shows identifying a remediation response comprising selling the items for the clearance price, and instructing the attendant to present the remediation response comprising carrying out the transaction at the reduced price. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by doing so in order to increase customer satisfaction.

As to claim 29, Dejaeger in view of Kesel show compensating the attendant for properly presenting the response since an employee is compensated for the proper conduct of his job. They do not show analyzing if the attendant properly presents the response. Walker et al show this element. It would have been obvious to one of ordinary skill in the art to further modify the method of Dejaeger by analyzing for proper response as taught by Walker et al in order to ensure that messages are properly conveyed.

Response to Arguments

Applicant's arguments with respect to claims 1-29 have been considered but are moot in view of the new ground(s) of rejection.

Otherwise, applicant's arguments filed 2/9/2004 have been fully considered but they are not persuasive.

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As to claim 21, it is noted that the portable computing device is shown in Dejaeger et al.

As to claim 29, it is noted that Walker specifically discusses compensating an attendant for the proper presentation of any response. Further, as presenting a response is part of the job of the attendant, his base pay is compensation for properly presenting the response. Similarly, Walker shows analyzing presentation of verbal messages.

As to claims 30, 33, and 35, applicant argues that the motivation is not suggested in the references. However, it is not required that the motivation be recited in the reference, but rather that it be known to one of ordinary skill in the art at the time of the invention. The practice of making verbal communication between to people has long been practiced in order to personalize the transaction and increase customer satisfaction. Many people are uncomfortable dealing with technology and prefer dealing directly with people.

Next the applicant argues that Dejaeger teaches away from the modification. The examiner disagrees. While Dejaeger displays messages, it provides no suggestion that it is the displaying of messages, as opposed to the verbal communication of messages, that is at issue in the invention. The attendant in the apparatus of Dejaeger could easily communicate the messages displayed without contradicting the purpose or intent of Dejaeger.

Conclusion

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Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

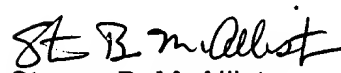
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. McAllister whose telephone number is (703) 308-7052. The examiner can normally be reached on M-Th 8-6:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert P. Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Steven B. McAllister